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98TH CONGRESS } SENATE { REPORT
1st Session } { No. 98-11

GRANTING TEMPORARY USE PERMITS TO FEDERAL AGENCIES ON PUBLIC LANDS

FEBRUARY 28 (legislative day, FEBRUARY 23), 1983.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 612]

The Committee on Energy and Natural Resources, having considered the same, favorably reports an original bill (S. 612) to amend the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) to permit temporary use by Federal departments and agencies of public lands controlled by the Bureau of Land Management, Department of the Interior, and recommends that the bill do pass.

PURPOSE

S. 612, as reported would authorize the Secretary of the Interior to allow temporary use of public lands by Federal departments and agencies by permit for a specific term and one renewal period.

BACKGROUND AND NEED

Section 302(b) of FLPMA authorizes the Secretary to permit other Federal agency use of public lands only through rights of way, withdrawal or cooperative agreement when the proposed uses are similar or closely related to the programs of the BLM for the public lands involved. There is no provision for temporary or short term uses. The temporary land use requirement of Federal departments or agencies are diverse and are difficult to accommodate under current law. Withdrawal and cooperative agreement authority are not sufficient or unwieldy.

The need for temporary use permits has become evident from recent experiences of the Bureau of Land Management in attempting to accommodate the land use requirements of Federal departments and agencies. In one instance, for example, BLM was unable to permit the use of a site on public lands by the Environmental Protection Agency for the purpose of monitoring the effects of hazardous waste disposal areas on private lands adjacent to those public lands. In another, the Secretary could not permit the Federal Aviation Adminis-

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tration to use public lands for its vector analysis program, which requires the occasional short-term use of mountain tops.

The amount and variety of Interior-controlled public land in the continental United States and Alaska, together with its diversified terrain and climatic conditions, present the military services with opportunities to vary their training operations and yet not require the use of any one particular area on a recurring basis. Yet the Secretary of the Interior is not able to permit short-term use of public lands by the military because the authorizing authorities he may use are not suitable.

A temporary use permit or authorization is consistent with procedures formerly used by the Bureau of Land Management to authorize special uses of public lands on a temporary basis. Issuance of temporary use permits should be subject to environmental review by the Secretary of the Interior in the same manner as are other land use authorizations.

Legislative History

S. 612 was ordered reported as an original bill on February 23, 1983, as authorized by the Senate Energy and Natural Resources Committee. S. 612 is identical to S. 1705 as reported and passed the Senate in the 97th Congress. The Public Lands and Reserved Water Subcommittee received testimony on S. 1705 on July 27, 1982. The Administration supported the enactment of S. 1705 as reported. No hearings were held on S. 612 in the 98th Congress.

At a business session on February 23, 1983, the Committee on Energy and Natural Resources ordered S. 612 favorably reported.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources in an open business session on February 23, 1983, by a unanimous vote of a quorum present recommends the Senate pass S. 612 as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure [1]	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz [1]	
Mr. Johnston [1]	
Mr. Jackson	
Mr. Bumpers	
Mr. Ford	
Mr. Matsunaga	
Mr. Melcher	
Mr. Tsongas	
Mr. Bradley	

[1] Indicates voted by proxy.

Cost and Budgetary Considerations

The Committee does not anticipate any additional budgetary impact from enactment of S. 612, to amend the Federal Land Policy and Management Act of 1976 (943 U.S.C. 1701) to permit temporary use by Federal departments and agencies of public lands controlled by the Bureau of Land Management, Department of the Interior.

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., February 23, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed a bill to amend the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) to permit temporary use by federal departments and agencies of public lands controlled by the Bureau of Land Management, Department of the Interior, as ordered reported by the Senate Committee on Energy and Natural Resources, February 23, 1983.

Based on this review, it is expected that no significant cost to federal, state or local governments would be incurred as a result of enactment of this bill.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

James Blum,
(For Alice M. Rivlin, Director).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 612.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

S. 612 would amend the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) to permit temporary use by Federal departments and agencies of public lands controlled by the Bureau of Land Management, Department of the Interior.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 612.

Executive Communications

The pertinent legislative report will be requested by the Committee from the Department of the Interior. It is the intention of the Chairman to place the legislative report in the Congressional Record for the information of the Senate.

Changes in Existing Law

In compliance with paragraph 12 on Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 612 as ordered reported, as shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of October 21, 1976

(90 Stat. 2743, as amended, 45 USC 1701)

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MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

Sec. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, *temporary use permits under section 319 of this Act*, and, where the proposed use and devel-

opment are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any reguluations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

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TEMPORARY USE PERMITS FOR FEDERAL AGENCIES

SEC. 319. The Secretary is authorized to issue temporary use permits to federal departments and agencies to use, occupy, and develop public lands. Such permits may be issued for a term not to exceed three years and may be renewed once for an additional term not to exceed three years.

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